

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 6:03-1092-HMH
vs.)	
)	
Adrian Gambrell,)	OPINION & ORDER
)	
Movant.)	

This matter is before the court on Adrian Gambrell's ("Gambrell") motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. On October 17, 2012, Gambrell's term of supervised release was revoked for new criminal conduct and he was sentenced to 60 months' imprisonment.

Gambrell appealed his judgment for revocation of supervised release and his appeal is currently pending. The instant motion was filed on April 5, 2013.¹ Because his direct appeal is still pending, the court lacks jurisdiction to consider Gambrell's § 2255 motion. Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (finding that filing a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal"), superseded on other grounds by, Fed. R. App. P. 4(a)(4). As such, Gambrell's collateral attack of his conviction and sentence under 28 U.S.C. § 2255 is premature. See Pratt v. United States, 129 F.3d 54, 60-61 (1st Cir. 1997). Based on the foregoing, after a thorough review of the facts and pertinent law, the court dismisses Gambrell's § 2255 motion without prejudice.

¹ Houston v. Lack, 487 U.S. 266 (1988).

Therefore, it is

ORDERED that Gambrell's § 2255 motion, docket number 1004, is dismissed without prejudice.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
April 11, 2013

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.